

HONORABLE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NATIONAL PRODUCTS INC.,

Plaintiff,

v.

INNOVATIVE INTELLIGENT  
PRODUCTS, LLC D/B/A GPS LOCKBOX,

Defendant.

INNOVATIVE INTELLIGENT  
PRODUCTS, LLC D/B/A GPS LOCKBOX,

Counterclaim Plaintiff,

v.

NATIONAL PRODUCTS INC.,

Counterclaim Defendant.

Case No. 2:20-cv-00428-DGE

**DECLARATION OF DAVID K.  
TELLEKSON IN SUPPORT OF  
NATIONAL PRODUCTS INC.'S  
MOTION FOR ATTORNEYS' FEES**

**Note On Motion Calendar:**  
**October 20, 2023**

**REDACTED VERSION**

**JURY TRIAL DEMANDED**

I, David K. Tellekson, hereby state and declare as follows:

1. I am an attorney admitted to practice in the State of Washington and before this Court. I am a partner with the law firm of Fenwick & West LLP, counsel for Plaintiff National Products Inc. ("NPI"). I have personal knowledge of the matters set forth in this declaration and, if called upon to do so, could and would testify competently as to the matters set forth herein.

2. I submit this declaration in support of NPI's Motion for Attorneys' Fees ("Motion").

1. Fenwick & West LLP is a firm of over 450 attorneys that specializes in providing legal services for leading technology companies, start-ups, and others on the edge of innovation. Fenwick enjoys a reputation as one of the preeminent technology and intellectual property firms in the United States. I am a partner at Fenwick & West and have been a practicing attorney for 40 years, specializing in intellectual property litigation.

2. Two attorneys performed significant work related to NPI's Motion for Discovery Sanctions and to Compel Discovery, Dkt. 130. As detailed below, the hourly rates charged by the attorneys who worked on this matter are consistent with or below the prevailing market rates for attorneys with comparable skill, qualifications, experience, and reputations. The labor of these individuals contributed to the final attorney work product billed to the client.

3. The attorneys and paralegal who worked on NPI's Motion are each identified below, along with a summary of their experience and qualifications. Additionally, copies of the attorneys' biographies as they appear on the Fenwick website are attached as **Exhibit A**.

a. **David K. Tellekson:** I am a partner at Fenwick, specializing in intellectual property litigation and counseling. I am a member in good standing with the Washington State Bar and the New York State Bar and have practiced law in the State of Washington since 2003. I have represented companies of all sizes, across a wide variety of industries, helping them pursue and defend claims in high-stakes complex commercial litigation, including intellectual property disputes. I was recognized as "Washington's Outstanding Litigator" in both 2018 and 2020, and have been repeatedly recognized by other publications, including ManagingIP, IAM Patent, U.S. News – Best Lawyers, and Chambers USA, as a leading patent litigator. My standard hourly rate in 2023 is [REDACTED]. My 2023 hourly rate in this matter is [REDACTED] per hour, reflecting the long-term relationship with NPI, among other factors. As lead and trial counsel, my responsibilities on this case included directing litigation strategy, managing client relationships, coordinating and

1 reviewing associate work, and motion practice. With respect to the Motion, I billed 6.6 hours  
 2 reviewing the work of an associate and lead drafter of the brief, Jonathan Tamimi.

3           **b. Jonathan G. Tamimi:** Mr. Tamimi, a litigation associate at Fenwick, is a  
 4 member in good standing with the Washington and California State Bars and is a registered patent  
 5 attorney. He has practiced patent litigation since 2015, including in Washington State since 2019.  
 6 In addition, Mr. Tamimi clerked for Judge Chen at the Court of Appeals for the Federal Circuit  
 7 from 2021–2022. That opportunity is a testament to Mr. Tamimi’s outstanding credentials and  
 8 skills as a lawyer. Mr. Tamimi’s standard rate in 2023 is [REDACTED] per hour, and his rate on this  
 9 matter in 2023 is [REDACTED] per hour. Mr. Tamimi was involved in drafting NPI’s Motion, its supporting  
 10 declaration and proposed order, analyzing GPS’s Opposition, and drafting NPI’s reply brief.

11           **c. Lawrence Gallwas:** Mr. Gallwas is a senior litigation paralegal at Fenwick  
 12 with 18 years of legal experience, including significant trial experience. His standard rate 2023 is  
 13 [REDACTED] an hour and is [REDACTED] per hour on this matter in 2023. Mr. Gallwas performed legal and fact  
 14 cite checking for NPI’s Motion and reply brief.

### 15           **REASONABLENESS OF FENWICK’S HOURLY RATES**

16           4. In my role, I am familiar with Fenwick’s business and billing practices, and I am  
 17 generally familiar with the rates comparable firms charge for intellectual property litigation in the  
 18 Western District of Washington. Fenwick sets its hourly billing rates to be competitive with rates  
 19 generally charged by other full-service law firms for attorneys of similar experience. Fenwick  
 20 attorneys routinely appear in intellectual property litigation matters in the Western District of  
 21 Washington. Printouts from Lex Machina showing appearances by Fenwick in litigation matters  
 22 in the Western District of Washington in the past five years are attached as **Exhibit B**. In my  
 23 opinion, the billable rates charged by the specific attorneys and paralegal on this case are  
 24 reasonable for their respective levels of expertise and as compared to other law firms with similar  
 25 experience in the Seattle area.

26           5. Fenwick provides comprehensive legal services to national and international  
 27  
 28

1 technology and life sciences companies. Fenwick has over 450 attorneys practicing in offices in  
 2 Mountain View, San Francisco, and Santa Monica, California, in Seattle, Washington, in  
 3 Washington, D.C., and in New York, New York. Fenwick is nationally recognized for its handling  
 4 of, among other things, intellectual property litigation. For example, in the past few years Fenwick  
 5 has been:

- 6 • Recognized as the Best Performing Patent Litigation Law Firm  
 7 Representing Defendants by Patexia (2023);
- 8 • Of more than 17,000 lawyers evaluated by Patexia, Fenwick lawyers ranked  
 9 as the top three best performing patent litigators in the defense category;  
 10 eight Fenwick lawyers ranked among the top 100 best performing and most  
 11 active patent litigators in the country (2023);
- 12 • Recognized by The American Lawyer as one of the 100 largest law firms in  
 13 the United States by revenue (2023);
- 14 • Honored by World Trademark Review 1000 in the highest tier nationally  
 15 and in California for outstanding work in trademark enforcement and  
 16 litigation (2023);
- 17 • Recognized Nationally for Commercial Litigation and IP & Patent  
 18 Litigation by U.S. News – Best Lawyers® Best Law Firms Guide (2022);
- 19 • Recognized among top tiers national for intellectual property by Benchmark  
 20 Litigation (2022);
- 21 • Two Fenwick attorneys recognized among top women PTAB trial lawyers  
 22 by the PTAB Bar Association (2022);
- 23 • Recognized as the Patent Litigation Best Performing Law Firm Overall (for  
 24 Defendants and Plaintiffs) by Patexia (2022);
- 25 • Selected as one of the top firms in California for intellectual property work,  
 26 including IP litigation, as well as securities litigation and trademark,  
 27 copyright and trade secrets, by Chambers USA (2022);

- Consistently recognized by The Legal 500 as a national leader for patent, securities, copyright and trademark litigation (2022);
- Recommended among the top patent litigation firms in California, New York and Washington in IAM Patent 1000: The World's Leading Patent Practitioners (2022);
- Named one of the top firms nationally and in California and New York for trademark, copyright and patent litigation by Managing Intellectual Property (2022);
- Twenty practices and 79 lawyers ranked among the nation's best by The Legal 500 (2022);
- Consistently honored among the nation's leading firms by Chambers USA;
- 23 of Fenwick's practice areas were recognized for their excellence (2022);
- Named one of just four finalists for Litigation Department of the Year by The American Lawyer (2020).

6. I understand that the Court will calculate a "lodestar" by "multiplying the number of hours . . . the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *McGrath v. Cnty. of Nev.*, 67 F.3d 248, 252 (9th Cir. 1995). In addition, I understand that "[t]he reasonable hourly rate corresponds to the prevailing market rate in the relevant community, considering the experience, skill, and reputation of the attorney in question." *Eat Right Foods, Ltd v. Whole Foods Mkt. Servs., Inc.*, No. C13-2174RSM, 2015 WL 11233198, at \*3 (citing *Chalmers v. City of L.A.*, 796 F.2d 1205, 1210 (1986), *amended on other grounds*, 808 F.2d 1373 (9th Cir. 1987)). I further understand that justification of the rates may rest upon evidence that clients in fact pay the rates sought (as NPI does here), attorney affidavits regarding prevailing rates in a community, other cases determining the rates to be reasonable, and survey evidence regarding the fees of comparable counsel. *See Green v. Monrovia Nursery Co.*, No. 18-CV-05257-RGK-GJS, 2020 WL 861807, at \*4 (C.D. Cal. Jan. 23, 2020) (citing *Int'l Intell. Mgmt. Corp. v. Lee Yunn Enters., Inc. (U.S.A.)*, No. 08-CV-7587 R (JWJx), 2009 WL 9137315, at \*3 (C.D. Cal. Dec. 14,

2009)).

7. Other types of evidence routinely considered by federal courts in assessing the reasonableness of fees support the conclusion that Fenwick's fees in this matter were reasonable:

- a. Multiple federal courts have implicitly and explicitly found Fenwick's rates to be reasonable for patent and other intellectual property cases. *See, e.g., Realtime Adaptive Streaming LLC v. Netflix, Inc.*, No. CV 19-6359-GW-JCx, 2020 WL 7889048, at \*11 (C.D. Cal. Nov. 23, 2020); *In re Personalweb Techs., LLC Pat. Litig.*, No. 18-md-02834-BLF, 2021 WL 796356 (N.D. Cal. Mar. 2, 2021); *IPVX Pat. Holdings, Inc. v. Voxernet LLC*, No. 13-cv-01708 HRL, 2014 WL 5795545, at \*7 (N.D. Cal. Nov. 6, 2014) (plaintiff conceded Fenwick's rates "were reasonable"); *Netbula, LLC v. Chordiant Software, Inc.*, No. C08-00019 JW (HRL), 2010 WL 11575580, at \*5 (N.D. Cal. Dec. 17, 2010) ("[Fenwick's] rates are comparable to other full service firms in the Bay Area and are reasonable."); *Yue v. Storage Tech. Corp.*, No. C-07-05850 JW (EDL), 2008 WL 11256331, at \*4 (N.D. Cal. Aug. 6, 2008) (report and recommendation) (same), *adopted by* 2008 WL 4185835 (N.D. Cal. Sept. 5, 2008); *Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-07098-AB (SHx), 2015 WL 1746484, at \*16-20 (C.D. Cal. Mar. 24, 2015), *aff'd*, 847 F.3d 657 (9th Cir. 2017) (Fenwick's rates were "reasonable and w[ere] comparable to prevailing market rates for attorneys of similar experience, skill, and reputation in similarly complex litigation"); *Jones v. Corbis Corp.*, No. CV 10-8668-SVW (CWx), 2011 WL 4526084, at \*1-2 (C.D. Cal. Aug. 24, 2011).

8. Numerous articles in the last few years demonstrate that Fenwick's rates are within the rates that have been charged by other firms for complex litigation. Attached as **Exhibit C** is a compilation of these articles.

- a. An article published by the American Lawyer on April 3, 2023 stated that "[b]illing rates for second-year associates at some BigLaw firms are nearing \$1,000 an hour."
- b. An article published by Bloomberg Law in June 2022 stated that "[s]ome of the

1 nation's top law firms are charging more than \$2,000 an hour.

2 c. An article published by the ABA Journal in December 2022 stated that "[p]lanned  
3 increases in law firm billing rates have reached a 15-year high."

4 d. An article published by the ABA Journal on May 27, 2020 reported on the billing  
5 rates for several big law firms and found that senior associates were billing more  
6 than \$1,000 per hour.

7 e. An article published by the American Lawyer in July 2020 found that partners at  
8 big law firms were regularly billing over \$1,000 per hour.

9 9. I am familiar with the factors recited in *McGinley v. Magone Marine Service, Inc.*,  
10 No. C13-1678JLR, 2013 WL 6230422, at \*4 (W.D. Wash. Dec. 2, 2013) that courts use to  
11 determine the reasonableness of a rate in the context of a fees award or to enhance or decrease a  
12 lodestar rate once calculated. These factors are:

- 13 • The novelty and difficult of the questions involved;
- 14 • The experience, reputation and ability of the attorneys; and
- 15 • The amount involved and the results obtained.

16 In this case, these factors support the reasonableness of the rates charged. Although the overall  
17 issues themselves were not novel, NPI's Motion was made complex and difficult because of the  
18 number of issues that needed to be addressed, including GPS's failure to timely provide responses,  
19 GPS's deficient, untimely responses, and GPS's continued withholding of relevant discovery.  
20 Moreover, given GPS's failure to confer in good faith, counsel was required to extensively  
21 document its efforts, particularly knowing that GPS was likely to accuse NPI of failing to confer.  
22 Additionally, the two attorneys who worked on this motion both have significant experience,  
23 which allowed counsel to efficiently address these issues. And, given GPS is seeking \$20 million  
24 for alleged antitrust injuries, NPI was more than justified in dedicating sufficient time and effort  
25 to its Motion to ensure it had the discovery required to defeat GPS's multi-million dollar damages  
26 claim.

**REASONABLENESS OF FEES INCURRED**

10. In the regular course of business, Fenwick's attorneys, paralegals, and staff keep detailed, contemporaneous time records for all time billed to client matters handled by the firm. Attorneys and paralegals record their time to the nearest tenth of an hour in an electronic time record system. Each timekeeper also identifies the general category of work performed from a pre-set list of task-based categories, and then adds a more detailed explanation of the work performed. Fenwick's electronic time record system, common among comparable law firms, enables Fenwick to track all fees incurred by the firm on behalf of its clients and further allows for generation of monthly invoices detailing the hours worked on a particular matter, the nature of the work performed and the fees incurred for that work.

11. On a monthly basis, a preliminary invoice is generated from the computerized records described above. I personally review these preliminary invoices and provide discounts where appropriate. **Exhibit D** is a copy of the time entries for work done on this matter relating to NPI's Renewed Motion to Compel from April 2023 to May 2023, reflecting this motion-related work of each timekeeper at Fenwick who billed to this matter during that time period and for whom Fenwick seeks to recover fees.

12. The work done by Fenwick attorneys and paralegals as reflected in **Exhibit D** was reasonably necessary to NPI's Motion. Fenwick attorneys have represented NPI in numerous intellectual property cases and were able to leverage their extensive knowledge of NPI to be more efficient and lower expenses. Moreover, work on this case was assigned to team members of appropriate seniority. The number of partner hours billed on NPI's Motion made up just 13% of all attorney hours.

13. To support the overall reasonableness of its request, NPI has excluded all fees that did not directly relate to NPI's Motion. That includes fees for corresponding with counsel about its failure to provide responses, analyzing GPS's untimely, deficient responses, efforts to get GPS to confer, as well as issues ancillary to the Motion. Further, time entries reflecting both work on



1 the Motion and other discovery work have been appropriately discounted to reflect only work  
2 necessary for the Motion and reply.

3 14. GPS served an expert report from its damages expert on September 15, 2023. In  
4 that report, GPS's expert opines that GPS has suffered roughly \$20 million in injury due to NPI's  
5 alleged anticompetitive conduct.

6  
7 I declare under penalty of perjury under the laws of the United States that the foregoing is  
8 true and correct.

9 Executed in San Diego, California on October 5, 2023.

10  
11 s/David K. Tellekson  
David K. Tellekson

**CERTIFICATE OF SERVICE**

I, Sharie L. Parks, hereby certify that on October 5, 2023, I caused the foregoing  
**DECLARATION OF DAVID K. TELLEKSON IN SUPPORT OF NATIONAL  
 PRODUCTS INC.'S MOTION FOR ATTORNEYS' FEES** to be served on the following  
 parties as indicated below:

<b>Joshua King (WSBA No. 22244)</b> King IP Law PO Box 50205 Bellevue, WA 98015 <i>Attorney for Defendant/Counterclaim Plaintiff</i> INNOVATIVE INTELLIGENT PRODUCTS, LLC D/B/A GPS LOCKBOX	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b> <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email jking@king-iplaw.com
<b>Christopher Villani (WSBA No. 21504)</b> Compass Rosa Law 1225 East Sunset Dr., Ste. 145-4860 Bellingham, WA 98226 <i>Attorney for Defendant/Counterclaim Plaintiff</i> INNOVATIVE INTELLIGENT PRODUCTS, LLC D/B/A GPS LOCKBOX	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b> <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email chris@compassrosa.us

Dated: October 5, 2023

By: s/Sharie L. Parks

For David K. Tellekson, WSBA No. 33523  
 FENWICK & WEST LLP